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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,342	03/01/2004	Peter M. Ryan	RYAN	9049

7590 10/03/2005

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EXAMINER
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PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,342	<b>Applicant(s)</b> RYAN, PETER M.	
	<b>Examiner</b> Jason Prone	<b>Art Unit</b> 3724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/1/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because in Figure 1, edge 23/21 is not shown. A solid line representing edge 23/21 should run parallel to the top edge line. In Figure 2, a hidden line representing sharp edge 24 should run from the center of item 18 to item 28. Also, in Figure 4, the blade structure should be drawn with hidden lines, the copy of the drawing in the file may use hidden lines but the examiner is unable to tell due to the quality of the drawing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

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2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10, 11, 15, and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Page 3 lines 17-20 of the specification states that the dimensions of the blade along the vertical and horizontal axis (30/32) is 1.5 inches. However, claims 10, 11, 15, and 16, disclose that these dimensions are "on the order of" 1.5 inches. Which means the dimensions could be a little less than or a little greater than 1.5 inches. The specification provides support for the exact distance of 1.5 inches along the horizontal and vertical axis. The specification does not provide support for any other distance that might be "in the order of" 1.5 inches.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard (2,566,112) in view of Holler (2004/0093742).

Claims 1-6:

In regards to claim 1, Barnard discloses the invention including a blade of generally triangular cross section (10, the shape in Figure 3 of the instant application defines the term "generally triangular". The shape in Figure 2 of Barnard is as triangular as Figure 3 of the instant application) having first and second concave sides (24) converging from respective first edges (22) to a common sharp edge (16) and a third side joining the first edges of the first and second sides and providing a heel for the blade (32), a hilt including a handle fixed to a first end of the blade (12).

In regards to claim 4, Barnard discloses the blade is tapered along its length to a blunted second end (Fig. 1 clearly shows the top edge, starting at reference numeral "10", tapering from the handle and then ends to a blunt edge (right end of Fig. 1)).

In regards to claim 6, Barnard discloses the third side of the blade is convex (32).

However, Barnard fails to disclose a saber, a guard fixed to a first end of the blade, a second free end of the blade is pointed, blade is tapered along the length to an acute second end, and the blade is tapered along its length to a knife edge configuration.

Holler teaches a cutting tool structure that can either be a knife or a sword/saber ([0010]), a guard fixed to a first end of the blade (60), a second free end of the blade is pointed (46), blade is tapered along the length to an acute second end (follow the length from 42 to 46), and the blade is tapered along its length to a knife edge configuration (44). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard with a saber structure, a pointed end/knife

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configured end, and a guard, as taught by Holler, to allow for longer cutting tool with a sharper end having a guard to protect the user.

Claim 12:

In regards to claim 12, Barnard discloses the invention including an elongate blade of generally triangular cross section (10) having first and second concave sides (24) converging from respective first edges (22) to a common sharp edge (16) and a third convex side joining the first edges of the first and second sides (32), and a hilt fixed to a second end including a handle (12).

However, Barnard fails to disclose a saber, the first, second, and third sides being tapered along their lengths to a pointed first end of the blade, and a guard fixed to a first end of the blade.

Holler teaches a cutting tool structure that can either be a knife or a sword/saber ([0010]), the first, second, and third sides being tapered along their lengths to a pointed first end of the blade (follow 42 to 46), and a guard fixed to a first end of the blade (60). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard with a saber structure, a tapered to a pointed end configuration, and a guard, as taught by Holler, to allow for longer cutting tool with a sharper end having a guard to protect the user.

6. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler as applied to claims 1 and 12 above, and further in view of Guerra (Des. 114,396). Barnard and Holler disclose the invention including a handle

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with a long diameter bisecting an angle defined by the respective first edges of the first and second sides and the common sharp edge (12 in Barnard).

However, Barnard and Holler fail to disclose the handle has an oval-shaped cross section.

Guerra teaches a handle with an oval-shaped cross section (Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler with a handle with a oval cross section, as taught by Guerra, to allow for more comfortable grip.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler as applied to claim 1 above, and further in view of The Bud K Catalog. Barnard and Holler disclose the invention including that the length of the blade is greater than 12 inches (paragraph [0010] of Holler).

However, Barnard and Holler fail to disclose the specific blade length of at least 20 inches.

The Bud K Catalog discloses that it is old and well known for sword/saber blades to be at least 20 inches (Line 2 of Cobra Twin description (27 ¼")). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler with a blade with a length of at least 20 inches, as taught by The Bud K Catalog, to allow for a blade to be of a specific size.

8. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler further in view of Guerra as applied to claims 1 and 7 above, and further in view of The Bud K Catalog. Barnard, Holler, and Guerra disclose the

invention including, in regards to claim 11, adjacent the hilt a distance between the common sharp edge and a mid point of the third side is on the order of 1.5 inches (W in Holler) and that the length of the blade is greater than 12 inches (paragraph [0010] of Holler).

However, Barnard, Holler, and Guerra fail to disclose a specific blade length that ranges from 24 to 48 inches.

The Bud K Catalog discloses that it is old and well known for the length of a sword/saber blade to range from 24 to 48 inches (Line 2 of Cobra Twin description (27 ¼")). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler further in view of Guerra, with a blade with a length ranging between 24 and 48 inches, as taught by The Bud K Catalog, to allow for a blade to be of a specific size.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler further in view of Guerra as applied to claims 12 and 13 above, and further in view of The Bud K Catalog. Barnard, Holler, and Guerra disclose the invention including that the length of the blade is greater than 12 inches (paragraph [0010] of Holler).

However, Barnard, Holler, and Guerra fail to disclose a specific blade length that ranges from 24 to 48 inches.

The Bud K Catalog discloses that it is old and well known for the length of a sword/saber blade to range from 24 to 48 inches (Line 2 of Cobra Twin description (27 ¼")). Therefore, it would have been obvious to one of ordinary skill in the art, at the



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time of the invention, to have provided Barnard in view of Holler further in view of Guerra, with a blade with a length ranging between 24 and 48 inches, as taught by The Bud K Catalog, to allow for a blade to be of a specific size.

10. It is to be noted that claims 10 and 15 (with dependant claim 16) have not been rejected over prior art. It may or may not be readable over the prior art but cannot be determined at this time in view of the issues under 35 USC § 112.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Palumbo, Gerber, Jr., Chen Dai, Jones, Paul et al., Wong, Harris, Cecilio, Barker, II, Matsutani et al.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 571-272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

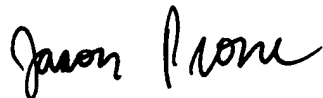
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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 27, 2005

A handwritten signature in black ink, appearing to read "Jason Prone". The signature is written in a cursive, flowing style.

Patent Examiner

Jason Prone

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T.C. 3700